
(2009) 09 JH CK 0019
In the Jharkhand High Court

Nirmala Kunwar, Durgawati Devi and Prakash Chandra Dwedi APPELLANT
Vs
The State of Bihar and Others RESPONDENT

Date of Decision : 16-09-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2009) 09 JH CK 0019

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Amareshwar Sahay, J.—Heard the Parties.

2. After the matter has been remanded by the Division Bench, these three writ petitions have been placed for "Admission" for fresh consideration. The earlier order dated 14.10.1999 disposing of the three writ petitions in terms of the order passed in C.W.J.C. No. 82 of 1999 (R) has been set aside by the Division Bench.

3. The relevant facts are that by an Order dated 14.11.1998, the Director, Secondary Education, Bihar, Patna (Annexure-1) in C.W.J.C. No. 275 of 1999 (P), terminated the services of 30 (thirty) School teachers including the present three writ petitioners Anil Kumar Tiwary, Ugrah Narayan Ram and Prakash Chandra Dwedi.

4. Several writ petitions were filed by the different writ petitioners challenging the same very order dated 14.11.1998 passed by the Director, Secondary Education. As it appears that the first writ petition was filed by Krishna Kumar Tiwari being C.W.J.C. No. 82 of 1999 (R) at Ranchi Bench of Patna High Court. The said Writ Petition was allowed by order dated 23.08.1999 holding that pursuant to the advertisement made in January, 1990, the name of the writ petitioner was forwarded by the Employment Exchange after his name was selected for Interview and the Additional Director of Education, Ranchi was competent to make appointment and therefore, the ground for termination from

service of the petitioner as mentioned in the order dated 14.11.1998 was nonest. Accordingly, the same was set aside and the writ petitioner Krishna Kumar Tiwari was directed to be reinstated to the post of Clerk with back wages. This order passed in C.W.J.C. No. 82 of 1999 (R) was challenged by the State by filing Letter Patent Appeal No. 469 of 1999 (R) but the same was dismissed by the Division Bench by order dated 02.03.2000. The State, thereafter, preferred SLP before the Supreme Court which was also dismissed by order dated 19.01.2000. Therefore, it appears that the order of the Single Bench passed in C.W.J.C. No. 82 of 1999 (R) was affirmed by the Division Bench in L.P.A as well as by the Supreme Court in Special Leave Petition.

5. Thereafter, as it appears that one Abhay Kumar Sinha, whose service was also terminated by the aforesaid order dated 14.11.1998, filed C.W.J.C. No. 2284 of 1998 and the said Writ Petition was also allowed by order dated 20.09.1999 and the petitioner was directed to be reinstated with full back wages.

6. On similar grounds, the other teachers whose services were also terminated by same order dated 14.11.1998 approached the High Court by filing several writ petitions and in all the writ petitions mentioned below, their termination order was set aside and they were directed to be reinstated in service:

i. C.W.J.C. No. 521 of 1999 [Smt. Renu Mishra v. State of Bihar and Ors.] - Allowed on 24.01.2001.

ii. C.W.J.C. No. 4206 of 1999 [Shailesh Kumar v. The State of Bihar and Ors.] - Allowed on 08.03.2000.

7. It appears that during pendency of the present writ petitions, writ petitioner Anil Kumar Tiwary of C.W.J.C. No. 275 of 1999 died and as such, after deleting his name, in his place, name of his wife Nirmala Kunwar has been substituted by order dated 11.10.2006.

Similarly, it appears that the writ petitioner Ugrah Narayan Ram of C.W.J.C. No. 412 of 1999 also died during pendency of the writ petition and in his place, the name of his widow Durgawati Devi has been substituted.

8. Mr. Rajiv Ranjan, learned Counsel appearing for the petitioners, submitted that the case of the present three writ petitioners are exactly similar to the other persons whose writ petitions were allowed and, their order of termination have been set aside and they have been ordered to be reinstated and they are working. So far as these writ petitioners are concerned, their case is also that after the advertisement was issued, their names were sent by the Employment Exchange and after Interview, their names were recommended for appointment. It is only after following the procedures for appointment, they were appointed and, therefore, the order of termination from service contained in the order dated 14.11.1998, was illegal.

9. On the other hand, Mr. Manoj Tandon, learned S.C. - II, by citing the decision of the Supreme Court in the case of State of Bihar Vs. Upendra Narayan Singh

and Others, and in the case of General Manager, Uttaranchal Jal Sansthan Vs. Laxmi Devi and Others, as well as the Order dated 17.07.2006 passed by learned Single Judge of this Court in W.P.(S) No. 7071 of 2005 which was affirmed in L.P.A. No. 395 of 2006 by order dated 12.06.2007, has submitted that the petitioners are not entitled to any relief.

He submitted that one Chandra Bhushan Singh also filed W.P.(S) No. 7071 of 2005 challenging the same very order dated 14.11.1998, which has been challenged by these writ petitioners. A Single Bench of this Court, by order dated 17.07.2006, dismissed the said writ petition on the ground that the name of the petitioner was not called for from the Employment Exchange nor the advertisement was published in the News Paper and no Interview letter was issued to the candidate for appearing before the Selection Board and without following these procedures, the Regional Deputy Director of Education appointed him and, therefore, the order of appointment was illegal and void ab initio. The learned Single Judge relied on a decision of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others,

Mr. Manoj Tandon has heavily relied on a recent decision of the Supreme Court in the case of State of Bihar Vs. Upendra Narayan Singh and Others, and has submitted that the initial appointment of the petitioner was illegal since prior to their appointment, due procedure for appointment was not followed, therefore, the petitioners are not entitled to any relief. He further submitted that only because the petitioners have continued in service for a long time, would not validate their illegal appointment.

10. From perusal of the Judgment of the Supreme Court in the case of State of Bihar v. Upendra Narayan Singh and Ors. (Supra), cited by Mr. Tandon, it appears that it has been held therein that if the initial appointment of a person is made without any advertisement, without calling for his name from the Employment Exchange, without holding any interview, then that would amount to violation of Articles 14 and 16 of the Constitution of India.

11. After going through the different orders produced before me by the counsel for the parties which have already been noticed above, I find that the case of the present writ petitioners stand on the similar footings to that of C.W.J.C. No. 521 of 1999 [Smt. Renu Mishra v. State of Bihar and Ors. - Allowed on 24.01.2001] and C.W.J.C. No. 4206 of 1999 [Shailesh Kumar v. The State of Bihar and Ors. - Allowed on 08.03.2000].

In the present case, the specific case of the petitioners are that there was an advertisement and pursuant thereto, the petitioners applied for appointment. Their names were also sent by the Employment Exchange and, thereafter, they were selected for appointment against vacant posts after following the due procedure for appointment. Therefore, the case of the petitioners is not similar to the order passed in the case of Chandra Bhushan Singh v. The State of Jharkhand and Ors. [W.P.(S) No. 7071 of 2005] cited on behalf of the respondent

State since after following due procedure for public appointment the petitioners were appointed. Thus, the decision of the Supreme Court in the case of State of Bihar v. Upendra Narayan Singh and Ors. (Supra) has no application in the facts and circumstances of the present case. Therefore, the ground for termination of the services of the writ petitioner mentioned in order dated 14.11.1998 of the Director, Secondary Education, Bihar, Patna to the effect that the initial appointment of the petitioner is bad, is held to be nonest.

12. Accordingly, all the above mentioned three Writ Petitions are allowed. The orders dated 14.11.1998 passed by the Director, Primary Education terminating the services of the petitioners is hereby set aside. Since the petitioners Anil Kumar Tiwari and Ugrah Narayan Ram have already died and, therefore, there is no question of their reinstatement. However, the respondents are directed to pay consequential benefits to the widows of petitioners Anil Kumar Tiwari [in C.W.J.C. No. 275 of 1999 (P)] and Ugrah Narayan Ram [in C.W.J.C. No. 412 of 1999 (P)].

So far Prakash Chandra Dwedi [Petitioner in C.W.J.C. No. 11961 of 1998 (P)] is concerned, he is directed to be reinstated in service with all back wages.